

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* A. V. D. JONES, Minor.

UNPUBLISHED  
March 8, 2016

No. 328387  
Wayne Circuit Court  
Family Division  
LC No. 11-502699-NA

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Before: RONAYNE KRAUSE, P.J., and JANSEN and STEPHENS, JJ.

PER CURIAM.

Respondent mother<sup>1</sup> appeals as of right the order terminating her parental rights to her minor child, AVDJ, under MCL 712A.19b(3)(a)(ii) (parent deserted child and has not sought custody), (c)(i)<sup>2</sup> (failure to rectify conditions leading to adjudication), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). We affirm.

Respondent has a history of substance abuse and mental health issues that necessitated her two children<sup>3</sup> being removed from her care in August 2011. At the October 2011 adjudication trial and dispositional hearing, respondent admitted to the petition and was ordered to comply with a treatment plan devised to address those issues. The children were placed with their maternal aunt. After failing to substantially comply with the treatment plan through the first two review periods, respondent stopped participating in services and stopped visiting her

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<sup>1</sup> The parental rights of AVDJ's father were also terminated.

<sup>2</sup> We note that the trial court ruled that MCL 712A.19b(3)(c) provided a statutory basis for termination, but did not specify whether it was referring to MCL 712A.19b(3)(c)(i) or (c)(ii). However, the court stated during the dispositional hearing that it found that DHHS "did establish grounds by clear and convincing evidence for the grounds that they cited for the mother which were section (a,ii) section (c), section (j), and section (g) of the termination statute." The statutory ground listed in the supplemental petition was MCL 712A.19b(3)(c)(i). Therefore, we conclude that the court found that MCL 712A.19b(3)(c)(i) provided a statutory basis for termination.

<sup>3</sup> Only one of these children, AVDJ, was the subject of this order terminating respondent's parental rights.

children. At a May 20, 2014 hearing, it was established that respondent had not contacted the agency since July 2013.

Petitioner sought to terminate respondent's parental rights to AVDJ in July 2014. At the termination hearing in September 2014, respondent explained that she had been homeless for two years before April 2014 and was unable to focus on her children due to her homelessness. Respondent testified that her significant other was providing her with stable housing and financial support and that she was actively seeking employment. She testified that she last saw AVDJ in February 2014 when she attended her other child's birthday party. Respondent stated that she had not attempted to visit AVDJ since February 2014 because of her assumption that she no longer had visitation rights. Respondent also testified to reestablishing contact with the agency in July 2014 and to being in compliance with the services for which she had been referred.

A foster-care supervisor testified that the child was thriving with her aunt, but also noted that the child was anxious over the proceedings in this case. The court was concerned that a resolution in this case was not reached in three years and was disconcerted that respondent did not attempt to visit her children even after her life purportedly stabilized. The court found that the statutory grounds for termination were established by clear and convincing evidence and, focusing on the need for permanency, concluded that the termination of respondent's parental rights was in the child's best interests.

Respondent first contends that the trial court erred in finding that there were statutory grounds to terminate her parental rights. We disagree.

We review for clear error a trial court's ruling that a statutory ground for termination has been proven by clear and convincing evidence. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

A court may terminate parental rights under MCL 712A.19b(3)(a)(ii) if it finds by clear and convincing evidence that "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period." A parent's failure to maintain contact with her children and participate in the service plan can support a finding that the parent deserted the child and failed to seek custody. See *In re Hall*, 188 Mich App 217, 223-224; 469 NW2d 56 (1991).

In this case, it was established that respondent went well over 90 days without seeing AVDJ. Respondent admitted in September 2014 that she had not visited the child since February 2014. Moreover, respondent explained her failure to contact the agency during her two years of homelessness, despite having a cell phone, by stating "I was going through my own issues it was—I couldn't even take care of myself so I know I couldn't take care of my kids." Further, the trial court was asked to take judicial notice of the court file in this case, which contained evidence of respondent's substantial failure to comply with the treatment plan even before she ceased contact with the service agency in July 2013. Although respondent re-established contact with the agency and resumed services in July 2014, she did not visit AVDJ. Thus, there was clear and convincing evidence that respondent went at least 91 days without visiting the child,

contacting the service agency, or complying with her treatment plan. Therefore, the trial court did not clearly err in finding that respondent deserted AVDJ for at least 91 days and did not seek custody during that time.

The evidence supports the court's finding with respect to MCL 712A.19b(3)(a)(ii), and "[o]nly one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights . . . ." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). However, we note that there was clear and convincing evidence to support the trial court's decision to terminate respondent's parental rights under the remaining statutory grounds.

A court may terminate parental rights under MCL 712A.19b(3)(c)(i) if it finds by clear and convincing evidence that 182 or more days have passed since the initial dispositional order and "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." In this case, the initial dispositional order was issued on November 3, 2011. The conditions that led to the adjudication were respondent's substance abuse and mental health issues. It was established at earlier hearings that respondent was not receiving treatment for her mental health problems or taking the random drug and alcohol screens, and that she stopped participating in services in July 2013. It was clear that respondent's substance abuse issues were ongoing as she stated during the termination hearing that she would test positive for marijuana. Moreover, in its order, the court noted that respondent had previously admitted to having a psychiatric history and that she "presented no evidence that she has done anything to address her mental illness." Thus, it was not erroneous for the trial court to determine that the conditions that led to the adjudication continued to exist.

The court observed that AVDJ was in care for three years, and the case worker indicated that the child was anxious for the proceedings to be resolved. Moreover, although respondent had recently begun participating in services, respondent showed no signs in the previous three years that she could consistently comply with a treatment plan and achieve the desired effect within a reasonable time. See *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009) (finding no reasonable likelihood that the respondent would rectify her struggle with drug addiction in a reasonable time where "[t]he circuit court correctly determined that the two years [the child] already had spent in foster care, her entire life, constituted too long a period to await the mere possibility of a radical change in respondent mother's life"). Hence, it cannot be said that the court clearly erred in determining that there was not a reasonable likelihood that the conditions that led to the adjudication would be rectified within a reasonable time.

A court may terminate parental rights under MCL 712A.19b(3)(g) if it finds by clear and convincing evidence that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." A lack of compliance with a parent-agency treatment plan supports a finding that MCL 712A.19b(3)(g) was established by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 300-301; 690 NW2d 505 (2004) (affirming termination under MCL 712A.19b(3)(g) where the respondent complied with some aspects of the treatment plan but "only minimally complied with the more important aspects of the family plan, including visitation with the children").

Here, respondent minimally complied with the treatment plan through the first two dispositional review hearings before “dropping out” of services as of the July 25, 2012 hearing. At a May 20, 2014 hearing, there was testimony that respondent had been “out of the picture” since July 2013. Moreover, respondent explained during the termination hearing that her children were not her priority during her years of homelessness, and she testified, “There was [sic] days I didn’t even eat so at that time my focus really wasn’t even on trying to get my kids[.] I felt that it was impossible.” Further, respondent testified that other than a “good amount of clothes” she bought her children in the last year, she had not provided for AVDJ. Given respondent’s substantial failure to comply with the treatment plan and cooperate with the agency for three years, along with her admitted inability to provide for the child, the trial court did not clearly err in finding that respondent failed to provide proper care or custody of AVDJ. And respondent’s failure to achieve meaningful compliance with the treatment plan in three years supported a finding that there was not a reasonable likelihood that she would be able to provide proper care for the child within a reasonable time.

Finally, a court may terminate parental rights under MCL 712A.19b(3)(j) if it finds by clear and convincing evidence that “[t]here is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.” When evaluating the evidence supporting termination pursuant to this section, a lengthy period of instability in the parent’s life compared to a recent period of stability bears on the parent’s current capacity to provide proper care. *In re Utrera*, 281 Mich App 1, 25; 761 NW2d 253 (2008) (“Any rational evaluation of the evidence must take into account [a] respondent’s lengthy history of instability as relevant to her current capacity to provide proper care for the child.”).

Respondent’s two years of homelessness before her purported five-month period of stability supports termination under this section. See *In re Utrera*, 281 Mich App at 25. Moreover, respondent previously testified to calling the police because she did not have any food or money for her children and admitted to having an intoxicated altercation with her neighbor the last time the children were in her care. Considering that respondent did not comply with the treatment plan designed to address her substance abuse and mental health issues, it was not clearly erroneous for the trial court to find a reasonable likelihood that AVDJ would be harmed if returned to her mother.

Respondent also argues that the trial court erred in finding that termination of her parental rights was in AVDJ’s best interests. We disagree.

A court’s best-interest determination is also reviewed for clear error. MCR 3.977(K); *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). The petitioner must prove by a preponderance of the evidence that termination of parental rights is in the child’s best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

To determine whether termination of parental rights is in a child’s best interests, the court should consider a wide variety of factors that may include the child’s

bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. [*In re White*, 303 Mich App at 713 (citation and quotation marks omitted).]

The court may also consider the factors of "a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the [child's] well-being while in care, and the possibility of adoption." *Id.* at 714.

In determining that termination was in AVDJ's best interests, the court emphasized the need for permanency and finality. Indeed, the need for permanency was particularly salient in this case as the proceedings were ongoing for over three years and respondent had vacillated between actively seeking reunification and completely disappearing. The need for finality was also evidenced by the testimony that the child was very conscious of, and concerned with, the proceedings. Moreover, there were multiple advantages to placement with the maternal aunt, as she had taken care of the child and her sister for three years. There was evidence that AVDJ was stable and thriving with her maternal aunt, with whom she shares a strong bond.

In contrast, respondent spent much of those three years homeless and not participating in services designed to address her mental health and substance abuse issues. As the court noted, respondent had not attempted to visit her child for seven months. Although respondent began participating in services a couple of months before the termination hearing, her recent compliance did not erase her actions of the prior three years and the effect thereof on her child. We also note that the court properly considered when rendering its decision at the termination hearing the fact that AVDJ's placement with a maternal aunt weighed against termination, and the court nevertheless found that termination was in the child's best interests. See *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012) (explaining that the fact that a child is placed with relatives is an explicit factor that the court must consider in deciding whether termination is in the child's best interests since placement with relatives weighs against termination).

Respondent also argues in passing that termination of her parental rights was impermissibly based on her past conduct. In support of that argument, she relies on *In re JL*, 483 Mich 300, 331; 770 NW2d 853 (2009), in which the Michigan Supreme Court stated in dicta "that termination based on 'a presumption of unfitness predicated solely on past conduct' would be inconsistent with the 'beyond a reasonable doubt' standard of the [Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*]." (Citation omitted.) This case was not governed by the ICWA and thus *In re JL* has no application. We conclude that the trial court did not clearly err in determining that termination was in the best interests of the child.

Affirmed.

/s/ Amy Ronayne Krause  
/s/ Kathleen Jansen  
/s/ Cynthia Diane Stephens